

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ARTHUR MCELROY,)	
)	
Plaintiff,)	
)	
v.)	1:15CV1034
)	
DEPARTMENT OF CORRECTIONS,)	
)	
Defendant(s).)	

ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff, a prisoner of the State of North Carolina, submitted a civil rights action pursuant to 42 U.S.C. § 1983, together with an application to proceed *in forma pauperis*. The form of the Complaint is such that serious flaws make it impossible to further process the Complaint. The problems are:

1. Plaintiff does not name proper defendants or give sufficient addresses for them to be served. Plaintiff must name the persons who are actually responsible for the alleged violations of his constitutional rights. He names no persons at all.
2. Plaintiff does not appear to state any viable claim for relief. He claims to be a past molestation victim who objects to being housed with sex offenders and gangsters. Prisons house many dangerous persons. It is not a violation of a prisoner's constitutional rights to merely be housed with them. Plaintiff would need to show a particular danger and an inappropriate lack of response by persons named as defendants. He also claims that guards are allowing or even participating in people spitting on him. However, he states no facts specific enough to state any claim for relief.

3. Plaintiff does not request any proper form of relief. Plaintiff asks that the Court force the North Carolina Department of Public Safety to remove all sex offenders from the general prison population, send them to other states if they are from another state, and have them dress in pink. It is not appropriate for the Court to intervene in the Department of Public Safety's housing decisions in this manner. Plaintiff also asks that the Court force the North Carolina legislature to pass certain laws. The Court cannot force a state to pass laws.

Consequently, the Complaint should be dismissed, but without prejudice to Plaintiff filing a new complaint, on the proper § 1983 forms, which corrects the defects of the present Complaint. To further aid Plaintiff, the Clerk is instructed to send Plaintiff new § 1983 forms, instructions, an application to proceed *in forma pauperis*, and a copy of pertinent parts of Fed. R. Civ. P. 8 (*i.e.*, Sections (a) & (d)).

In forma pauperis status is granted for the sole purpose of entering this Order and Recommendation.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation. The Clerk is instructed to send Plaintiff § 1983 forms, instructions, an application to proceed *in forma pauperis*, and a copy of pertinent parts of Fed. R. Civ. P. 8 (*i.e.*, Sections (a) & (d)).

IT IS RECOMMENDED that this action be filed and dismissed *sua sponte* without prejudice to Plaintiff filing a new complaint, on the proper § 1983 forms, which corrects the defects cited above.

This, the 9th day of December, 2015.



Joe L. Webster

United States Magistrate Judge